

BOARD OF APPEALS CASE NO. 4972

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BEFORE THE

APPLICANT: Mangione Family
Enterprises

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ZONING HEARING EXAMINER

REQUEST: Variance to develop within
the non-tidal wetlands and 75 foot NRD
District buffer; Stans Road, Joppa

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 9/22/99 & 9/29/99

HEARING DATE: November 17, 1999

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Record: 9/24/99 & 10/1/99

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ZONING HEARING EXAMINER'S DECISION

The Applicant is Mangione Family Enterprises. The Applicant is requesting a variance to Section 267-41(D)(5), and 267-41(D)(6) of the Harford County Code, to allow development activities within non-tidal wetlands and the 75 foot Natural Resource District buffer in an CI District.

The subject parcel is owned by Anthony Piccinini and is located on Stans Road in the First Election District. The parcel is identified as Parcel No. 899, in Grid 1-A, on Tax Map 65. The parcel contains 28.34 acres, more or less, all of which is zoned Commercial Industrial.

Mr. Douglas Kopeck appeared and testified that he is a registered landscape architect and is Vice President of Campbell Nolan Associates. Mr. Kopeck said that he oversees all environmental planning and environmental compliance issues. Mr. Kopeck testified that he performed a wetland delineation and an environmental analysis of the subject site. He said the site bordered on the I-95, a residential neighborhood, a trucking facility and golf training facility.

Mr. Kopeck explained that a large portion of the site is located within a Natural Resource District (NRD) and that the Applicant's request will not have an adverse effect on the Natural Resource District. Mr. Kopeck said that there will be some disturbance to the non-tidal wetland and NRD, but that the Applicant intends to compensate for the disturbance by offering a 3-to-1 wetland mitigation replacement of any of the non-tidal wetlands that would be disturbed. He further testified that the addition of the buffer would effectively change the condition of the non-tidal wetland from a forested condition to an herbaceous emergent wetland condition.

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Mr. Kopeck said that he prepared an Environmental Planning Study and Concept Mitigation Plan, which were submitted as Applicant's Exhibit Nos. 7 and 8. He said that the proposed development would disturb approximately .51 acres of wetland and that the intended 3-to-1 replacement mitigation would result in approximately 1.65 acres of emergent wetland.

Mr. Kopeck further testified that there would actually be an increase in the environmental buffer through forest retention, adding that once the area is cleared around the proposed towers, the remainder of the site would be left as mature or near mature forest. He went on to testify that the remediation plan effectively creates more than twice the buffer to the resource.

Mr. Kopeck concluded his testimony by stating that the subject parcel is currently zoned Commercial Industrial and that if developed under the conventional CI standards, there could actually be more damage done to the wetlands without variances than under the current plan with variances.

Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, appeared and testified that the Staff had reviewed the Applicant's request and that the proposed use should have less of an impact on adjacent residences and on Stans Road than any other uses that are allowed in the Commercial Industrial District. He also said that the Department had reviewed the Environmental Impact Study and found that the proposed wetland mitigation on the site, the amount of forest retention, and the fact that the majority of the variance request only involved a change in vegetation, that there would not be an adverse impact on the NRD if the variance is approved. Mr. McClune said that it would be necessary for the wetland mitigation plan to be approved by the Army Corps of Engineers and the Maryland Department of the Environment. Mr. McClune said that the Department had received positive feedback from the Harford County Soil Conservation District.

CONCLUSION:

The Applicant is requesting variance to Section 267-41(D)(5) of the Harford County Code, to allow development activities within the non-tidal wetlands and 75 foot Natural Resource District buffer in a Commercial Industrial District.

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Section 267-41(D)(6) provides that the Board may grant variances from the Natural Resource District regulations upon a finding by the Board that the proposed development will not adversely affect the Natural Resource District.

The uncontradicted testimony of the Applicant's expert witness was that there would be no adverse affect on the Natural Resource District. The evidence indicated that the disturbance of the non-tidal wetland will be compensated by offering a 3-to-1 wetland mitigation replacement of any of the non-tidal wetlands that will be disturbed. The evidence further indicated that there will not be an elimination of the non-tidal wetlands, but rather a change in the nature of the non-tidal wetlands from a forested condition to an herbaceous emergent wetland condition.

In summary, the evidence offered by the Applicant, as corroborated by the testimony of Mr. Anthony McClune was that there would not be an adverse impact on the Natural Resource District and that following the mitigation, there would actually be a net gain in the non-tidal wetland and buffer. No evidence was introduced that the Applicant's request would impact the "Limitations, Guides and Standards" set forth in Section 267-9(l) of the Zoning code.

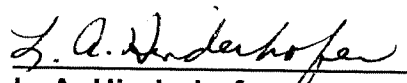
Therefore, it is the recommendation of the Hearing Examiner that the Applicant's request be approved, subject to the following conditions:

1. That the Applicant shall submit a detailed site plan to be reviewed and approved by the Department of Planning and Zoning.
2. That the Applicant shall obtain all necessary permits for the construction of the towers and all necessary equipment, storm water management facility, and driveways.
3. That the Applicant shall obtain all necessary approvals and permits from the Maryland Department of the Environment for construction and disturbance of the area around the towers.
4. That the Applicant shall submit a final mitigation plan to be approved by the Department of Planning and Zoning.

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5. That the Applicant shall submit to the County a letter of credit or bond for the wetland mitigation unless the Maryland Department of the Environment requires and obtains a bond for the required mitigation.

Date MARCH 30, 2000



L. A. Hinderhofer
Zoning Hearing Examiner